

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel, W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA
and OKLAHOMA SECRETARY OF THE
ENVIRONMENT C. MILES TOLBERT, in his
capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF
OKLAHOMA,

Plaintiffs,

v.

Case No. 4:05-CV-329-JOE-SAJ

TYSON FOODS, INC.; TYSON POULTRY,
INC.; TYSON CHICKEN, INC.; COBB-
VANTRESS, INC.; AVIAGEN, INC.; CAL-
MAINE FOODS, INC.; CAL-MAINE FARMS,
INC.; CARGILL, INC.; CARGILL TURKEY
PRODUCTION, LLC.; GEORGE'S, INC.;
GEORGE'S FARMS, INC.; PETERSON
FARMS, INC.; SIMMONS FOODS, INC.; and
WILLOW BROOK FOODS, INC.,

Defendants.

**EXHIBIT "1" TO: TYSON POULTRY, INC.'S MOTION TO DISMISS COUNT
3 OF PLAINTIFFS' FIRST AMENDED COMPLAINT AND
INTEGRATED OPENING BRIEF IN SUPPORT**



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

March 9, 2005

By Registered Mail, Return Receipt Requested

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* Additional addressees on page 6

Re: Notice of Intent to File Citizen Suit Pursuant to the Solid Waste Disposal Act, 42 U.S.C. § 6972 (a)(1)(B).

Dear Responsible Party:

Please be advised that the State of Oklahoma ("State") hereby gives ninety days notice in accordance with the citizen suit provisions of the federal Solid Waste Disposal Act ("SWDA"), 42 U.S.C. § 6972 ((a)(1)(B) and (b)(2)(A)) and applicable federal regulations, of its intent to file suit against Aviagen, Inc., Cal-Maine Farms, Inc., Cal-Maine Foods, Inc., Cargill, Inc., Cargill Turkey Production, LLC., Cobb-Vantress, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., Tyson Chicken, Inc., Tyson Foods, Inc., Tyson Poultry, Inc., and Willow Brook Foods, Inc. (hereinafter the "Poultry Integrators"). The Poultry Integrators have contributed and are continuing to contribute to the handling, storage and/or disposal of solid and/or hazardous waste in a manner that may and does present an imminent and substantial endangerment to human health and the environment in the Illinois River Watershed located in northeastern Oklahoma and northwestern Arkansas (hereinafter the "IRW").

Background

Millions of chickens and turkeys, owned by the Poultry Integrators, are raised annually on farms throughout the IRW, and include, without limitation, birds raised for food products, birds raised for egg production and birds raised for breeding and resupply purposes. These "poultry growing operations" owned by, operated by, and/or under contract with the Poultry Integrators generate hundreds of thousands of tons of poultry waste for which the Poultry Integrators are legally responsible. Poultry waste constitutes solid and/or hazardous waste pursuant to 42 U.S.C. §6903(5) and (27).

Since approximately 1980, it has been the practice of the Poultry Integrators to dispose of this waste on lands within the IRW resulting in the release of this waste and associated

pollutants, into the soils, groundwater and surface waters of the IRW – a practice which may and does present an imminent and substantial endangerment to human health and the environment in the IRW in violation of 42 U.S.C. § 6972 (a)(1)(B) and applicable federal regulations.

The Poultry Integrators have long known that poultry waste contains a number of constituents that can and do cause harm to the environment and human health. These constituents include, but are not limited to:

- (a) Phosphorus and phosphorus compounds;
- (b) Nitrogen and nitrogen compounds;
- (c) Arsenic and arsenic compounds;
- (d) Zinc and zinc compounds;
- (e) Copper and copper compounds;
- (f) Hormones;
- (g) Antibiotics; and
- (h) Microbial pathogens.

These constituents of poultry waste have been released into the land and/or waters of the IRW by the disposal practices of the Poultry Integrators. The Poultry Integrators' waste management and disposal practices, combined with their failure to respond adequately to the continued release of poultry waste into the IRW, present an imminent and substantial endangerment to human health and the environment.

Solid Waste Disposal Act

Section 7002 of the SWDA provides that any person may commence a civil action against any person "who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. . ." 42 U.S.C. §6972(a)(1)(B). The Poultry Integrators have contributed to the past and present handling, storage, and disposal of solid or hazardous waste that presents an imminent and substantial endangerment to human health and the environment in the IRW. The Poultry Integrators' waste management and disposal practices have caused and will continue to cause the migration of the pollutants throughout the waters and natural resources in the IRW. These conditions pose an imminent and substantial endangerment to human health and the environment.

Under the SWDA, the Poultry Integrators are responsible for the complete and prompt cleanup of all contamination resulting from the disposal and releases, as well as the State's attorney's fees and litigation expenses. The State intends to seek injunctive relief pursuant to 42 U.S.C. § 6972 (a) requiring the Poultry Integrators to immediately cease all further disposal and

releases of poultry waste in and to the IRW in violation of the SWDA, prevent further endangerment of human health and the environment by undertaking a comprehensive cleanup program, and such other relief as may be necessary to abate the imminent and substantial endangerment of human health and the environment.

Other Legal Liability

In addition to the foregoing, the State alleges that the manner in which the Poultry Integrators have disposed of and released waste for which they are responsible into the environment has resulted in violations of numerous other federal and state statutes, federal and state regulations, and common law. Accordingly, the State also intends to assert actions for additional remedies under other state, federal and common law. By notifying the Poultry Integrators of its claims under SWDA, the State does not waive, but rather reserves, its right to pursue additional claims against the Poultry Integrators under state, federal and common law at any time, including prior to the expiration of the Notice Period described herein for the SWDA claim.

SWDA Demand for Relief

Pursuant to the SWDA, the State demands that the Poultry Integrators (1) immediately cease all disposal and releases of poultry waste to the environment in violation of the SWDA; (2) immediately assess the damage to the waters and natural resources of the State caused by historical disposal and release of poultry waste; (3) develop and implement a plan for comprehensive remediation of the waters and natural resources of the State, including all sediments associated with the IRW; and (4) reimburse the State for past and future response costs, attorney's fees and costs.

The State is prepared to negotiate a prompt settlement that adequately addresses all of its claims under the SWDA. However, unless a binding settlement decree that addresses all of the State's claims under the SWDA is entered within 90 days of receipt of this letter, the State will seek an order in U.S. District Court requiring the Poultry Integrators to take all necessary measures to halt the endangerment of human health and the environment caused by the actions described in this letter. In connection with the intended litigation, the State has retained the assistance of the law firms listed below.

Sincerely,



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Oklahoma Attorney General

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